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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

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# No. 195

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ISIAH (IZELL) CHAMBERS, JACK WILLIAMSON, CHARLIE DAVIS AND WALTER WOODWARD (WOODARD), *Petitioners,*

*v.*

THE STATE OF FLORIDA.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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## BRIEF FOR RESPONDENT

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GEORGE COUPER GIBBS,
*Attorney General;*
TYRUS A. NORWOOD,
*Assistant Attorney General;*
*Council for Respondent.*

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## BRIEF FOR RESPONDENT

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### Opinion Below

The opinion of the Supreme Court of Florida from which this writ of certiorari was granted was reported in 187 So. p. 156, 136 Fla. 568. It appears in the record in this case at page 350. Other opinions of the Supreme Court of Florida out of which this case grew are reported in *Chambers* v. *State,* 111 Fla. 707, 151 So. 499; *Chambers* v. *State,* 111 Fla. 707, 152 So. 437; *Chambers* v. *State,* 117 Fla. 642, 158 So. 153; *Chambers* v. *State,* 123 Fla. 734, 167 So. 697.

## Jurisdiction

This Court granted petition for certiorari on October 23, 1939.

## Statement of the Case

Robert Darsey, a white man, was murdered in Pompano, Florida, a little town in Broward County, on Saturday night, May 13, 1933. In attempting to find the murderer, some twenty-five or thirty negroes were arrested on that night and the day following. All of these negroes were later discharged except the four petitioners herein, who signed confessions about a week later, on May 21, 1933. (R. 256-258.)

On May 22, 1933, these petitioners were indicted for murder in the first degree, and the court appointed counsel to represent them. See testimony of Elbert B. Griffis, (R. 133-140), and testimony of W. C. Mather (R. 187-194).

After the petitioners had talked with their counsel, Williamson and Woodward plead guilty and Davis and Chambers pled not guilty. Later, Davis changed his plea to guilty and was tried for murder in the first degree and found guilty without recommendation to mercy. There was stipulation of counsel that the court should consider testimony in the *Chambers* case in determining whether or not the petitioners were entitled to mercy. This practice is perfectly proper in the Florida courts. See *McCall* v. *State*, 185 So. 608, 135 Fla. 712. The court thereupon sentenced all of the petitioners to death, and they appealed. However, no transcript of record was filed but a petition for writ of *habeas corpus* was filed in the Supreme Court. See *Chambers* v. *State*, 151 So. 499, 111 Fla. 707. The court denied the petition for writ of *habeas corpus*, but directed that the transcript of record be pre-

pared and filed in the Supreme Court by the State Attorney. This was done and after an examination thereof, the case was affirmed. The court held that the record showed the following:

> "The testimony is to the effect that the four convicted defendants plotted the robbery of an aged man, Robert M. Darsey; that Darsey was waylaid in the nighttime and beaten to death, robbed, and left in the roadway to die; that the money was apportioned among some of the defendants; that all were present when the murder and robbery was committed. This testimony was by the defendants themselves, three of whom pleaded guilty and asked the mercy of the Court." *Chambers* v. *State*, 151 So. 499, 500, 111 Fla. 707.

Thereafter, a petition for writ of error *coram nobis* was filed in the Supreme Court in which it was alleged that the confessions upon which the petitioners were convicted were not freely and voluntarily made but were made as a result of coercion and fear. See *Chambers, et al.*, v. *State*, 152 So. 437, 111 Fla. 707. The court granted the petition for leave to file the writ of error *coram nobis* in the Circuit Court, which was presented to the Circuit Court and denied. Thereupon, another writ of error was taken to the Supreme Court. See *Chambers* v. *State*, 158 So. 153, 117 Fla. 642, where the court reversed the Circuit Court on the ground that the petition should have been granted and the facts should have been tried by a jury. The court, in this case, rendered a very exhaustive study on writ of error *coram nobis*. Thereafter, the case was remanded, and issues were made up on the following assignments of error *coram nobis*:

> "1. That the confession and pleas filed at the trial of these petitioners and which form the basis of the judgments and sentences herein complained of were

not in fact freely and voluntarily made by these petitioners.

2. That the confessions and pleas filed at the trial of these petitioners and which formed the basis of the judgments and sentences herein complained of were in fact, obtained (fol. 2) from these petitioners by force, coercion, fear of personal violence and under duress." (R. 1.)

The case was tried before a jury who found against the petitioners, and another appeal was taken. See *Chambers* v. *State*, 167 So. 697, 123 Fla. 734. The Supreme Court again reversed the Circuit Court on the ground that the court had improperly instructed the jury. Thereafter, the case was tried again in the Circuit Court on the same assignments of error *coram nobis*, and the jury again found against the petitioners, and the case was appealed. See *Chambers* v. *State*, 187 So. 156, 136 Fla. 568. The judgment in this case was affirmed, and it is from this order that this Court granted certiorari.

The court will see from the assignments of error (R. 1) that this case is not before it on an appeal from an order of conviction but one on certiorari from an order of the Supreme Court of Florida, affirming a judgment of a lower court, which held that the verdict of the jury finding against the petitioners on a question of whether or not the confessions were freely and voluntarily made, and were not made as a result of coercion or fear was proper, and the only record before the court is one made in the trial of the writs of error *coram nobis*, and not in the one upon which the petitioners were convicted of murder. We, therefore, doubt that there is any question properly before the court since the record in this case conclusively shows, as was found by the Circuit Court in the order overruling the motion for new trial and the Supreme Court affirming the

lower court, that there is ample evidence to support the verdict of the jury against the petitioners.

The petitioners have attempted to raise also the question that they are being deprived of their life without due process of law, because they were not allowed counsel. This Court clearly cannot pass upon this question because this was not one of the issues which the jury tried (R. 1), but if it could pass upon this question, the record conclusively shows that the petitioners were represented by counsel appointed by the court. This attack was thrown into the case as an afterthought when the case of *Powell* v. *State of Alabama*, reported in 287 U. S. 45, was decided by this Court.

In the brief of petitioners, under Section four thereof, which is headed Conceded Facts, certain statements are made which the State of Florida does not concede as true. The record in the case in which these petitioners were convicted is not before the court, yet the record which is before the court shows that Elbert B. Griffis and W. C. Mather, attorneys of long practice before the bar of the State of Florida, were appointed by the court to represent the petitioners and did confer with them before the arraignment, before the trial and during the trial (R. 133-187). The record also shows that the father of Davis, one of the petitioners, sent an attorney from Miami to talk with them about the case (R. 104).

The case is therefore resolved into one on a question of fact. The petitioners only stated that they were mistreated before the conviction and that the confessions were made as a result of coercion and fear. This was categorically denied by many witnesses of the State, and the physical facts as will later be pointed out, corroborate this denial.

## Summary of Argument

### I.

This Court will not reverse the judgment of the Supreme Court of Florida sustaining the verdict of the jury finding that the confessions of the petitioners were freely and voluntarily made and were not made as a result of coercion or fear, since the evidence conclusively supports the verdict of the jury.

### II.

The State court has decided and held that were the allegations in the assignments of error *coram nobis* proven, then petitioners would be entitled to the relief prayed; petitioners were given this opportunity and they failed to prove them, therefore, denied petitioners relief. This does not constitute a denial of due process of law.

### III.

This Court has no jurisdiction to consider the question of whether or not the petitioners were denied due process of law by reason of alleged lack of counsel to represent them in the original trial since this issue was not raised in the assignments of error *coram nobis*, but if this Court does have jurisdiction to consider this question, the record conclusively shows that petitioners were represented by counsel to meet all requirements of due process of law.

## ARGUMENT

**I. This Court will not reverse the judgment of the Supreme Court of Florida sustaining the verdict of the jury finding that the confessions of the petitioners were freely and voluntarily made and were not made as a result of coercion or fear, since the evidence conclusively supports the verdict of the jury.**

The issues before the lower court were as follows:

> "1. That the confessions and pleas filed at the trial of these petitioners and which form the basis of the judgments and sentences herein complained of were not in fact freely and voluntarily made by these petitioners.
>
> "2. That the confessions and pleas filed at the trial of these petitioners and which formed the basis of the judgments and sentences herein complained of were in fact, obtained (fol. 2) from these petitioners by force, coercion, fear of personal violence and under duress."

Therefore, the only question before this Court is whether or not the petitioners proved the allegations of these assignments. If they did, then they are entitled to relief; if they did not, as the courts of Florida held, then they are not entitled to relief. We call the court's attention that a confession to be admissible in the State of Florida need not be spontaneous.

> "It is not essential to the admissibility in evidence of an extrajudicial confession that it be the spontaneous utterance of the accused." Davis *v.* State, 90 Fla. 317, 105 So. 843. Nickels *v.* State, 90 Fla. 659, 106 So. 479. Nowling *v.* State, 99 Fla. 367, 126 So. 766.

The petitioners all testified that they made these confessions after being threatened, beaten and coerced (see R. 14-120, inclusive), and if this was all the evidence in the case, undoubtedly the petitioners would be entitled to relief. However, the State's testimony categorically contradicts all

these statements. See the testimony of the lawyers appointed to represent them (R. 133-141, inclusive, and 187-194, inclusive). The lawyers testified that they talked with the petitioners the day after the confessions were made and before they were arraigned and they asked them specifically whether or not the confessions were freely and voluntarily made and whether or not they had been coerced or beaten in order to force the confessions, and that petitioners said that they were not; that they did not see any evidence of any fresh scars or wounds on the bodies of the petitioners. The testimony of the prisoners in jail at the time the petitioners were alleged to have been beaten was all to the effect that although they were in close communication with the petitioners at the time they alleged they were beaten, they never saw any fresh marks or bruises or blood on any of them. See testimony of Frank Manuel (R. 141-148), James Little (R. 149-150), Willie Henderson (R. 153-159), Prince Douglas (R. 159-168), Lonnie Jackson (R. 168-169), Mack Little (R. 170-171), and Eddie Hamilton (R. 176-181). It is inconceivable that of all the persons in jail at that time that the petitioners, through their diligent counsel, could not have obtained some witnesses to testify as to the inhuman treatment which the petitioners alleged they were subjected to, if, in truth, they were subjected to any duress or torture.

B. B. Johnson (R. 181-182) testified that he saw the petitioners at the time the confessions were made and he did not see any signs upon any visible part of their bodies of either of them of any fresh scars or beatings or blood upon their bodies or clothing. He described their appearance as normal. W. F. Ford (R. 185-186), a carpenter, testified that although three of the petitioners did not have their shirts on at the time of these confessions that he did not see any evidence of any bruises on their bodies.

The Honorable Lewis F. Maire (R. 255-262), testifies that he saw petitioners when the confessions were made; that he warned the petitioners of their constitutional right before they gave their confessions and that all appeared to be in normal physical condition; that none of them had any fresh bruises, cuts, abrasion or anything of that description on their bodies so far as he could see and that they made the confessions freely and voluntarily.

The sheriff, Walter R. Clark (R. 265-293) and his deputies, Robert L. Clark (R. 244-247), A. D. Marshall (R. 294-316) all categorically deny the testimony of the petitioners.

Even the petitioner, Charlie Davis (R. 97), testifies that he was only questioned about five times during the entire week. These confessions, when they were first introduced, were determined by the trial court to have been made freely and voluntarily as this is his duty. See *Jeffcoat* v. *State*, 103 Fla. 466, 138 So. 385, *Kirby* v. *State*, 44 Fla. 81, 32 So. 836. When these confessions were allowed to be introduced in evidence and their admission was then questioned in the proceeding on writ of error *coram nobis*, the question of whether or not they were freely and voluntarily made was one for the jury. See *Chambers* v. *State*, 117 Fla. 642, 158 So. 153. Here the jury has decided this first question against the petitioners and we submit that this Court will not interfere on this question of fact since there is ample evidence in the record to support the verdict. The rule on this proposition is stated in *Hughes Federal Practice, Jurisdiction & Procedure*, Vol. 5, Sec. 3235, p. 326-327, as follows:

> "That the Supreme Court, at least in an action at law, has no jurisdiction to review the decision of the highest court of a state upon a pure question of fact, although a federal question might or might not be presented, according to the way in which the question of fact was decided, is clearly settled by a number of decisions.

"If, however, the finding of the state court, denying the asserted federal right has no support in the record, the jurisdiction of the Supreme Court is clear.

"Conversely, the court has said:

'It is not the province of this court to weigh conflicting testimony. The record shows testimony supporting the verdict, and that is as far as this court enters upon a consideration of that question.'

"The rule is thus settled that the decision of a state court upon a question of fact ordinarily cannot be made the subject of inquiry in the Supreme Court of the United States."

The rule is also well settled that

"The Supreme Court in an action at law at least has no jurisdiction to review the decisions of the high court of the state upon a pure question of fact, although a Federal question would or would not be presented according to the way in which the question of fact was decided."

*Lewis* v. *Campau*, 3 Wall. 106, (U. S.), *In Re Buchanan*, 158 U. S. 31, *Smiley* v. *Kansas*, 196 U. S. 447, *Great Northern R. R. Co.* v. *Donaldson*, 246 U. S. 121.

**II. The State Court has decided and held that were the allegations in the assignments of error coram nobis proven, then petitioners would be entitled to the relief prayed; petitioners were given this opportunity and they failed to prove them, therefore, denied petitioners relief. This does not constitute a denial of due process of law.**

As the court will see from the argument on the previous question, the sole question before the court is whether or not the confessions were freely and voluntarily made or whether they were made as a result of coercion or fear. These issues have been decided in the proper procedure against the petitioners. There is no denial of due process

of law under these facts. The petitioners alleged and stated facts, which, if true, would allow the judgments of guilt to be set aside, and they were given an opportunity to prove the alleged facts; however, the jury to which the question was presented, decided against them. The court in denying a motion for a directed verdict (R. 318) and in denying the motion for a new trial (R. 330), decided this question against them. The Supreme Court of the State of Florida in affirming the judgment of the lower court found against the petitioners. The petitioners have had every process of law in order to correct the error, if one was made, and how then can this Court say that there is a denial of due process of law just because the petitioners say there is, when the record shows otherwise? If this case presented a question of denial of due process of law, then every case in which a jury decides a disputed question of fact presents a question of denial of due process of law. One might be sued on a note, he pleads and proves that he did not make the note and the plaintiff proves that he did make the note, and the jury finds for the plaintiff, this settles the question and this Court would not, under such a state of facts, take jurisdiction to determine whether or not the defendant did actually make the note. The verdict of the jury would settle this question as here the jury has settled the question of the method of the making of these confessions. There is surely evidence in the record to prove that these confessions were freely and voluntarily made, and were not made as the result of any coercion, apprehension, promise or fear; for this Court to reverse the judgments of the courts of Florida, it would have to substitute its own judgment on the question of fact for that of the jury, the Circuit Court and the Supreme Court of Florida. As was said by this Court in the case of *Frank* v. *Mangum*, 237 U. S. 309 on page 334:

> "To do this, as we have already pointed out, would be not merely to disregard comity, but to ignore the es-

sential question before us, which is not the guilt or innocence of the prisoner, or the truth of any particular fact asserted by him, but whether the State, taking into view the entire course of its procedure, has deprived him of due process of law. This familiar phrase does not mean that the operations of the state government shall be conducted without error or fault in any particular case, nor that the Federal courts may substitute their judgment for that of the state courts, or exercise any general review over their proceedings, *but only that the fundamental rights of the prisoner shall not be taken from him arbitrarily or without the right to be heard according to the usual course of law in such cases.*

"We of course agree that if a trial is in fact dominated by a mob, so that the jury is intimidated and the trial judge yields, and so that there is an actual interference with the course of justice, there is, in that court, a departure from due process of law in the proper sense of that term. And if the State, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the State deprives the accused of his life or liberty without due process of law.

"But the State may supply such corrective process as to it seems proper. Georgia has adopted the familiar procedure of a motion for a new trial followed by an appeal to its Supreme Court, not confined to the mere record of conviction but going at large, and upon evidence adduced outside of that record, into the question whether the processes of justice have been interfered with in the trial court. Repeated instances are reported of verdicts and judgments set aside and new trial granted for disorder or mob violence interfering with the prisoner's right to a fair trial. Myers *v.* State, 97 Georgia 76 (5), 99; Collier *v.* State, 115 Georgia, 803." (Italics ours.)

and further on p. 338:

"*The Georgia courts, in the present case, proceeded upon the theory that Frank would have been entitled to this relief had his charges been true, and they re-*

*fused a new trial only because they found his charges untrue save in a few minor particulars not amounting to more than irregularities, and not prejudicial to the accused. There was here no denial of due process of law.*" (Italics ours.)

Have not the petitioners in this case been accorded every undamental right according to the usual course of law in uch cases? This case has been in the Supreme Court of lorida five times and the Florida courts proceed upon the heory that the petitioners would have been entitled to the elief had their alleged charges been true. They allowed the etitioners the usual mode of procedure to prove these harges, and the petitioners failed to meet this proof. Cer-ainly, this can be no denial of due process of law.

In the case of *Howard* v. *Kentucky*, reported in 200 U. S. 64, the defendant appealed from a judgment of the Court of ppeals of Kentucky affirming a conviction and sentence f murder against him. One of the jurors was excused for ause and the case was appealed on the ground that the ourt denied the defendant due process of law because of un-wfully excusing the juror. The Court in denying such ontention said on pages 172 and 173:

"He seems to make an issue with the Court of Appeals of the State upon the law of the State, and to contend that the court erred in the interpretation and application of that law. This contention encounters the ruling in In re Converse, 137 U. S. 624, 631, and other cases, which hold that a 'State cannot be deemed guilty of a violation of its obligations under the Constitution of the United States because of a decision, even if erroneous, of its highest court, while acting within its jurisdiction.'

"We cannot assume error in the decision of the Court of Appeals. We accept it, as we are bound to do, as a correct exposition of the law of the State—common, statutory and constitutional. Our inquiry can only be, *did the state law as applied afford plaintiff in error due*

*process as those words are used in the Fourteenth Amendment?* We think it did. It is not necessary to enter into a lengthy discussion of what constitutes due process of law. That has been done in a number of cases and there is nothing in the present case which calls for a repetition and an extension of the discussion. It may be admitted that the words 'due process of law,' as used in the Fourteenth Amendment, protect fundamental rights. What those are cannot ever be the cause of much dispute. In giving them protection, however, it was not designed, as was observed by the Chief Justice in In re Converse, supra, 'to interfere with the power of the State to protect the lives, liberty and property of its citizens; nor with the exercise of that power in the adjudication of the courts of the State in administering the process provided by the law of the State.'" (Italics ours.)

*In re Converse*, 137 U. S. 624. This court in speaking on whether or not a defendant, who had confessed to embezzlement under one section of the Michigan law, could be convicted of such confession under another section of the law of that State, said: (pages 631-632)

"It is not our province to inquire whether the conclusion reached and announced by the Supreme Court was or was not correct, for we are not passing upon its judgment as a court of error, nor can we consider the contention that the decision was not in harmony with the state constitution and laws.

"The single question is whether appellant is held in custody in violation of the Fourteenth Amendment to the Constitution of the United States, in that the State hereby deprives him of liberty without due process of law; for there is no pretence of an abridgment of his privileges and immunities as a citizen of the United States, nor of a denial of the equal protection of the laws. But the State cannot be deemed guilty of a violation of its obligations under the Constitution of the United States because of a decision, even if erroneous, of its highest court, while acting within its jurisdiction.

And, conceding that an unconstitutional conviction and punishment under a valid law would be as violative of a person's constitutional rights as a conviction and punishment under an unconstitutional law, we fail to perceive that this conviction and judgment are repugnant to the constitutional provision. Appellant has been subjected, as all persons within the State of Michigan are, to the law in its regular course of administration through courts of justice, and it is impossible to hold that a judgment so arrived at is such an unrestrained and arbitrary exercise of power as to be utterly void.

"We repeat, as has been so often said before, that the Fourteenth Amendment undoubtedly forbids any arbitrary deprivation of life, liberty or property, and in the administration of criminal justice requires that no different or higher punishment shall be imposed on one than is imposed on all for like offences, but it was not designed to interfere with the power of the State to protect the lives, liberty and property of its citizens; nor with the exercise of that power in the adjudications of the courts of a State in administering the process provided by the law of the State. The Supreme Court of Michigan did not exceed its jurisdiction or deliver a judgment abridging appellant's privileges or immunities or depriving him of the law of the land of his domicil. Arrowsmith *v.* Harmoning, 118 U. S. 194, Baldwin *v.* Kansas, 129 U. S. 52; in re Kemmler, 136 U. S. 436."

Thus, we see there is no Federal question involved in this case because the petitioners have not been treated any differently than other persons accused of crime in this State, would be treated. Every process of law has been held open to them and they have attempted to prove that their rights have been violated in this procedure, and have failed to do so. If there is any question of denial of due process of law in this case, then there is in every case in which a court decides that a confession was voluntary against the contention that it was not by the confessor, and the court will rea-

lize that this is not the law. The question of whether or not a question is voluntary is one peculiarly for the State Court to pass upon and if this is passed upon according to the same rules and the same procedure as is done in other cases, then there can be no denial of due process of law regardless of whether or not the conclusion reached by the State Court was correct or not.

The Florida Courts that passed upon the contentions of petitioners had jurisdiction of the cause, and there is evidence in the record to sustain their decision. Thus, there was no denial of due process of law.

**III. This Court has no jurisdiction to consider the question of whether or not the petitioners were denied due process of law by reason of alleged lack of counsel to represent them in the original trial since this issue was not raised in the assignments of error coram nobis, but if this Court does have jurisdiction to consider this question, the record conclusively shows that petitioners were represented by counsel to meet all requirements of due process of law.**

This court plainly has no jurisdiction to entertain this question because it was not an issue in the case below. See petitioner's assignments of error on writ of *coram nobis*:

> "Come now the petitioners in the above cause and say there is error in the judgments and sentences of this Honorable Court heretofore entered in this cause against these petitioners; that if the Court had known the facts as to how the confessions and pleas of guilt were obtained from these petitioners, said judgments and sentences never would have been entered by the Court. And for more specific assignments of error, these petitioners say:
>
> "1. That the confessions and pleas filed at the trial of these petitioners and which form the basis of the judgments and sentences herein complained of were not in fact freely and voluntarily made by these petitioners.

"2. That the confessions and pleas filed at the trial of these petitioners and which formed the basis of the judgments and sentences herein complained of were in fact, obtained (fol. 2) from these petitioners by force, coercion, fear of personal violence and under duress.

"Wherefore, petitioners pray that the said judgments and sentences may be vacated and set aside and that these petitioners be placed back in the same condition as they were before such confessions and pleas were entered." (R. 1.)

There is no question raised by these assignments that petitioners were denied right of counsel or were not given a fair and impartial trial, so surely this Court will not pass upon this contention. The court will also see that questions were not raised under the Federal Constitution on these assignments, therefore, this Court does not have jurisdiction to pass upon the same. See *Baldwin* v. *Kansas*, 129 U. S. 52, Text 57, where this Court said:

"In Spies *v.* Illinois, 123 U. S. 131, 181, this court said in regard to a question of this kind:

'As the Supreme Court of the State was reviewing the decision of the trial court, it must appear that the claim was made in that court, because the Supreme Court was only authorized to review the judgment for errors committed there, and we can do no more.'

"Again:

'If the right was not set up or claimed in the proper court below, the judgment of the highest court of the State in the action is conclusive, so far as the right of review here is concerned.'"

And further on page 57:

"The question whether the evidence in the case was sufficient to justify the verdict of the jury, and the question whether the constitution of the State of Kan-

> sas was complied with or not in the proceedings on the trial which are challenged, are not Federal questions which this court can review."

See also *Barrington* v. *Missouri*, 205 U. S. 483, where the appellant was contending that he was denied due process of law by reason of admissions in the testimony against him of certain of his admissions. The defendant failed to object to the testimony on the ground that it violated any Federal right, and the court in refusing to pass on the question said on page 486:

> "The suggestion came too late, and, moreover, Article V of the amendments, alone relied on, does not operate as a 'restriction of the powers of the State, but was intended to operate solely upon the Federal Government.' Brown *v.* New Jersey, 175 U. S. 172. And if, as decided, the admission of this testimony did not violate the rights of the plaintiff in error under the constitution and laws of the State of Missouri, the record affords no basis for holding that he was not awarded due process of law. Howard *v.* Fleming, 191 U. S. 126."

Certainly the court would not consider this question since it was not an issue in the lower court, and the State was not called upon to disprove this contention. However, the record in this case shows conclusively that the petitioners were represented by counsel before they were arraigned and during the trial. See testimony of Elbert B. Griffis (R. 133), who testified that he had been practicing law for eleven years at Ft. Lauderdale, Florida; that the court appointed him to represent Isiah (Izell) Chambers and Charlie Davis, two of the petitioners in this case; that he talked with them before they were arraigned and before the trial and inquired as to whether or not they had a defense, and also questioned them particularly as to whether or not the confessions that they were reported to have made were freely

and voluntarily made, or whether they had been subjected to any ill treatment, beatings, or coercion in order to force the confessions. See also the testimony of W. C. Mather (R. 187), who testified that he was appointed by Judge Tedder, Judge of the Circuit Court trying the men, to represent Williamson and Woodward, the other two petitioners, and who testified that he had been practicing law in Florida for about thirteen years; that he talked with the petitioners before their arraignment and trial, and that he explained to them fully the seriousness of pleading guilty to a murder charge, and also asked them about the confessions which they were reported to have made.

See also the testimony of Charlie Davis, one of the petitioners (R. 104), who testified that Mr. G. A. Worley, now State Attorney in Miami, came up to see them, while they were in jail, at the insistence of Davis's father. This surely shows that the petitioners were represented by counsel, and the Supreme Court of Florida in speaking on this question had this to say:

> "It is also contended here that defendants were arraigned, and put on trial without the appointment of counsel to represent them or without the opportunity to confer with counsel before trial.
>
> "This was not one of the issues before the jury and the record does not show a formal order of the trial court appointing counsel to represent defendants but it is shown that they were represented at the trial by able and experienced counsel who conferred with them before the trial. The fact that the record shows no formal order appointing counsel to represent them is not material but the better practice is that such an order should be shown." Chambers *v.* State, 187 So. 156, 158.

Three of the petitioners pled guilty and testified against Chambers, who did not plead guilty. There was no conten-

tion made that if allowed further time they could have prepared a defense to the case. A month elapsed from the time the crime was committed until the petitioners were tried, and more than two weeks from the time they were indicted and arraigned and tried. This case is very similar to that of *McCall* v. *State*, reported in 186 So. 510, 136 Fla. 317, where the Supreme Court of Florida on speaking of similar conditions said:

> "We have in our opinion, *supra*, set out in detail what the record shows occurred at and concerning the trial. The record shows affirmatively that when the defendant appeared at the bar of the court with counsel previously appointed to represent him the trial judge asked the defendant and his counsel if they had any motions to present. Counsel replied in effect that they had no motions to present and were ready to proceed. When the State had introduced its evidence before the trial judge, upon being interrogated by his counsel, McCall stated that he had entered a plea of guilty to the indictment charging kidnaping to hold for ransom, and he reasserted that such was his plea. He then clearly, intelligently and deliberately told in detail every step of his perpetration of the crime charged. He made no contention that he was not guilty of the crime charged in the indictment, nor did he make any contention of any sort that if given all the time of the future he could prepare any defense to the charge then pending against him.
>
> "Counsel appointed for him by the Court is recognized by this Court as an able, active and conscientious lawyer of many years of experience in the trial of criminal cases. We recognize the rule laid down in the cases of Powell *v.* Alabama, 287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A. L. R. 527, and Johnson *v.* Zerbst, as Warden, 304 U. S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461, but we find that the rules stated in those cases have no application in the instant case because of the controlling differences in factual conditions."

As the court will see, the question of lack of representation by counsel was never before the lower court, and was never even injected into this case until after the decision of this Court in *Powell* v. *Alabama, supra,* and the facts in this case are totally different from those in the *Powell* case.

## Conclusion

We, therefore, respectfully submit that the record in this case shows conclusively that the petitioners made their confessions freely and voluntarily, and that although they were given an opportunity to prove that they made their confessions through fear, coercion and torture, they failed to do so; that the court who tried this issue had jurisdiction to try the same and that its conclusion was correct, but even if it should have been erroneous, would not constitute a denial of due process of law since there is evidence to support the conclusions; that the question of whether or not the petitioners were represented by counsel is not properly before this Court. However, the record shows that they were properly represented by counsel and that the record in this case fails to show any question of the violation of the due process clause of the Constitution of the United States.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

No. 195.—October Term, 1939.

Isiah (Izell) Chambers, Jack Williamson, Charlie Davis and Walter Woodward (Woodard), Petitioners,
*vs.*
The State of Florida.

On Writ of Certiorari to the Supreme Court of the State of Florida.

[February 12, 1940.]

Mr. Justice Black delivered the opinion of the Court.

The grave question presented by the petition for certiorari, granted in forma pauperis,[1] is whether proceedings in which confessions were utilized, and which culminated in sentences of death upon four young negro men in the State of Florida, failed to afford the safeguard of that due process of law guaranteed by the Fourteenth Amendment.[2]

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[1] — U. S. —.

[2] Petitioners Williamson, Woodward and Davis pleaded guilty of murder and petitioner Chambers was found guilty by a jury; all were sentenced to death, and the Supreme Court of Florida affirmed. 111 Fla. 707, 151 So. 499. Upon the allegation that, unknown to the trial judge, the confessions on which the judgments and sentences of death were based were not voluntary and had been obtained by coercion and duress, the State Supreme Court granted leave to present a petition for writ of error coram nobis to the Broward County Circuit Court; 111 Fla. 706, 152 So. 437. The Circuit Court denied the petition without trial of the issues raised by it and the State Supreme Court reversed and ordered the issues submitted to a jury. 117 Fla. 642, 158 So. 153. Upon a verdict adverse to petitioners, the Circuit Court re-affirmed the original judgments and sentences. Again, the State Supreme Court reversed, holding that the issue of force, fear of personal violence and duress had been properly submitted to the jury, but the issue raised by the assignment of error alleging that the confessions and pleas "were not in fact freely and voluntarily made" had not been clearly submitted to the jury. 123 Fla. 734, 737, 167 So. 697. A change of venue, to Palm Beach County, was granted, a jury again found against petitioners and the Broward Circuit Court once more re-affirmed the judgments and sentences of death. The Supreme Court of Florida, one judge dissenting, affirmed, — Fla. —, — So. —. While the petition thus seeks review of the judgments and sentences of death rendered in the Broward Circuit Court and reaffirmed in the Palm Beach Circuit Court, the evidence before us consists solely of the transcript of proceedings (on writ of error coram nobis) in Palm Beach County Court wherein the circumstances surrounding the obtaining of petitioners' alleged confessions were passed on by a jury.

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*First.* The State of Florida challenges our jurisdiction to look behind the judgments below claiming that the issues of fact upon which petitioners base their claim that due process was denied them have been finally determined because passed upon by a jury. However, use by a State of an improperly obtained confession may constitute a denial of due process of law as guaranteed in the Fourteenth Amendment.[3] Since petitioners have seasonably asserted the right under the Federal Constitution to have their guilt or innocence of a capital crime determined without reliance upon confessions obtained by means proscribed by the due process clause of the Fourteenth Amendment, we must determine independently whether petitioners' confessions were so obtained, by review of the facts upon which that issue necessarily turns.[4]

*Second.* The record shows—

About nine o'clock on the night of Saturday, May 13, 1933, Robert Darcy, an elderly white man, was robbed and murdered in Pompano, Florida, a small town in Broward County about twelve miles from Fort Lauderdale, the County seat. The opinion of the Supreme Court of Florida affirming petitioners' conviction for this crime stated that "It was one of those crimes that induced an enraged community . . . ."[5] And, as the dissenting judge pointed out, "The murder and robbery of the elderly Mr. Darcy . . . was a most dastardly and atrocious crime. It naturally aroused great and well deserved indignation."[6]

Between 9:30 and 10 o'clock after the murder, petitioner Charlie Davis was arrested, and within the next twenty-four hours from twenty-five to forty negroes living in the community, including petitioners Williamson, Chambers and Woodward, were arrested without warrants and confined in the Broward County jail, at Fort Lauderdale. On the night of the crime, attempts to trail the murderers by bloodhounds brought J. T. Williams, a convict guard, into the proceedings. From then until confessions were obtained and petitioners were sentenced, he took a prominent part. About 11 P. M. on the following Monday, May 15, the sheriff and Williams

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[3] Brown v. Mississippi, 297 U. S. 278.

[4] Pierre v. Louisiana, 306 U. S. 354, 358; Norris v. Alabama, 294 U. S. 587, 590.

[5] — Fla. —, —.

[6] *Id.*, —.

took several of the imprisoned negroes, including Williamson and Chambers, to the Dade County jail at Miami. The sheriff testified that they were taken there because he felt a possibility of mob violence and "wanted to give protection to every prisoner . . . in jail." Evidence of petitioners was that on the way to Miami a motorcycle patrolman drew up to the car in which the men were riding and the sheriff "told the cop that he had some negroes that he . . . taking down to Miami to escape a mob." This statement was not denied by the sheriff in his testimony and Williams did not testify at all; Williams apparently has now disappeared. Upon order of Williams, petitioner Williamson was kept in the death cell of the Dade County jail. The prisoners thus spirited to Miami were returned to the Fort Lauderdale jail the next day, Tuesday.

It is clear from the evidence of both the State and petitioners that from Sunday, May 14, to Saturday, May 20, the thirty to forty negro suspects were subjected to questioning and cross questioning (with the exception that several of the suspects were in Dade County jail over one night). From the afternoon of Saturday, May 20, until sunrise of the 21st, petitioners and possibly one or two others underwent persistent and repeated questioning. The Supreme Court of Florida said the questioning "was in progress several days and all night before the confessions were secured" and referred to the last night as an "all night vigil." The sheriff who supervised the procedure of continued interrogation testified that he questioned the prisoners "in the day time all the week," but did not question them during any night before the all night vigil of Saturday, May 20, because after having "questioned them all day . . . [he] was tired." Other evidence of the State was "that the officers of Broward County were in that jail almost continually during the whole week questioning these boys, and other boys, in connection with this" case.

The process of repeated questioning took place in the jailer's quarters on the fourth floor of the jail. During the week following their arrests and until their confessions were finally acceptable to the State's attorney in the early dawn of Sunday, May 21st, petitioners and their fellow prisoners were led one at a time from their cells to the questioning room, quizzed, and returned to their cells to await another turn. So far as appears, the prisoners at no time during the week were permitted to see or confer with counsel

or a single friend or relative. When carried singly from his cell and subjected to questioning, each found himself, a single prisoner, surrounded in a fourth floor jail room by four to ten men, the county sheriff, his deputies, a convict guard, and other white officers and citizens of the community.

The testimony is in conflict as to whether all four petitioners were continually threatened and physically mistreated until they finally, in hopeless desperation and fear of their lives, agreed to confess on Sunday morning just after daylight. Be that as it may, it is certain that by Saturday, May 20th, five days of continued questioning had elicited no confession. Admittedly, a concentration of effort—directed against a small number of prisoners including petitioners—on the part of the questioners, principally the sheriff and Williams, the convict guard, began about 3:30 that Saturday afternoon. From that hour on, with only short intervals for food and rest for the questioners—"They all stayed up all night." "They bring one of them at a time backwards and forwards . . . until they confessed." And Williams was present and participating that night, during the whole of which the jail cook served coffee and sandwiches to the men who "grilled" the prisoners.

Sometime in the early hours of Sunday, the 21st, probably about 2:30 A. M., Woodward apparently "broke"—as one of the State's witnesses put it—after a fifteen or twenty minute period of questioning by Williams, the sheriff and the constable "one right after the other." The State's attorney was awakened at his home, and called to the jail. He came, but was dissatisfied with the confession of Woodward which he took down in writing at that time, and said something like "tear this paper up, that isn't what I want, when you get something worth while call me."[7] This same State's attor-

[7] A constable of the community, testifying about this particular incident, said in part:

"Q. Were you there when Mr. Maire [State's Attorney] talked to Walter Woodward the first time he came over there?

"A. Yes, sir.

"Q. Take his confession down in writing?

"A. Yes.

" . . . .

"Q. If he made a confession why did you all keep on questioning him about it. As a matter of fact, what he said that time wasn't what you wanted him to say, was it?

"A. It wasn't what he said the last time.

"Q. It wasn't what you wanted him to say, was it?

"A. We didn't think it was all correct.

" . . . .

ney conducted the State's case in the circuit court below and also made himself a witness, but did not testify as to why Woodward's first alleged confession was unsatisfactory to him. The sheriff did, however:

"A. No, it wasn't false, part of it was true and part of it wasn't; Mr. Maire [the State's attorney] said there wasn't enough. It wasn't clear enough.

". . . .

"Q. . . . Was that voluntarily made at that time?

"A. Yes, sir.

"Q. It was voluntarily made that time.

"A. Yes, sir.

"Q. You didn't consider it sufficient?

"A. Mr. Maire.

"Q. Mr. Maire told you that it wasn't sufficient, so you kept on questioning him until the time you got him to make a free and voluntary confession of other matters that he hadn't included in the first?

"A. No, sir, we questioned him there and we caught him in lies.

"Q. Caught all of them telling lies?

"A. Caught every one of them lying to us that night, yes, sir.

"Q. Did you tell them they were lying?

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"Q. What part of it did you think wasn't correct. Would you say what he told you there at that time was freely and voluntarily made?

"A. Yes, sir.

". . . .

"Q. What he freely and voluntarily told you in the way of a confession at that time, it wasn't what you wanted?

"A. It didn't make up like it should.

"Q. What matter didn't make up?

"A. There was some things he told us that couldn't possible be true.

". . . .

"Q. What did Mr. Maire say about it at that time; did you hear Mr. Maire say at this time 'tear this paper up, that isn't what I want, when you get something worth while call me,' or words to that effect?

"A. Something similar to that.

"Q. That did happen that night?

"A. Yes, sir.

"Q. That was in the presence of Walter Woodward?

"A. Yes, [illegible]"

And petitioner Woodward testified on this subject as follows:

"A. . . . I was taken out several times on the night of the 20th . . . So I still denied it. . . .

". . . .

"A. He said I had told lies and kept him sitting up all the week and he was tired and if I didn't come across I would never see the sun rise.

". . . .

"A. . . . then I was taken back to the private cell. . . . and shortly after that they come back, shortly after that, twenty or twenty-five minutes, and bring me out. . . . I [told Williams] if he would send for the State

"A. Yes, sir.
"Q. Just how would you tell them that?
"A. Just like I am talking to you.
"Q. You said 'Jack, you told me a lie'?
"A. Yes, sir."

After one week's constant denial of all guilt, petitioners "broke." Just before sunrise, the State officials got something "worthwhile" from petitioners which the State's attorney would "want"; again he was called; he came; in the presence of those who had carried on and witnessed the all night questioning, he caused his questions and petitioners' answers to be stenographically reported. These are the confessions utilized by the State to obtain the judgments upon which petitioners were sentenced to death. No formal charges had been brought before the confessions. Two days thereafter, petitioners were indicted, were arraigned and Williamson

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attorney he could take down what I said, I said send for him and I will tell him what I know. So he sent for Mr. Maire some time during Saturday night, must have been around one or two o'clock in the night, it was after midnight, and so he sent for Mr. Maire, I didn't know Mr. Maire then, but I know him now by his face.

". . . .

"A. Well he come in and said 'this boy got something to tell me' and Captain Williams says 'yes, he is ready to tell you.' . . .

". . . .

" . . . Mr. Maire had a pen and a book to take down what I told him, which he said had to be on the typewriter, but I didn't see any typewriter, I saw him with a pen and book, so whether it was shorthand or regular writing I don't know, but he took it down with pen. After I told him my story he said it was no good, and he tore it up. . . .

". . . .

"Q. What was it Mr. Maire said?
"A. He told them it wasn't no good, when they got something out of me he would be back. It was late he had to go back and go to bed.

". . . .

"A. . . . I wasn't in the cell long before they come back. . . .

". . . .

"Q. How long was that from the time you was brought into that room until Mr. Maire left there?
"A. Something like two or three hours, I guess, because it was around sunrise when I went into the room.
"Q. Had you slept any that night, Walter?
"A. No, sir. I was walked all night, not continually, but I didn't have no time to sleep except in short spaces of the night.

". . . .

"Q. When Mr. Maire got there it was after daylight?
"A. Yes, sir.

". . . .

"Q. Why did you say to them that morning anything after you were brought into the room?
"A. Because I was scared, . . . ."

and Woodward pleaded guilty; Chambers and Davis pleaded not guilty. Later the sheriff, accompanied by Williams, informed an attorney who presumably had been appointed to defend Davis that Davis wanted his plea of not guilty withdrawn. This was done, and Davis then pleaded guilty. When Chambers was tried, his conviction rested upon his confession and testimony of the other three confessors. The convict guard and the sheriff "were in the Court room sitting down in a seat." And from arrest until sentenced to death, petitioners were never—either in jail or in court—wholly removed from the constant observation, influence, custody and control of those whose persistent pressure brought about the sunrise confessions.

*Third.* The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history.[8] However, in view of its historical setting and the wrongs which called it into being, the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter,[9] to protect, at all times, people charged with or suspected of crime by those holding positions of power and authority. Tyrannical governments had immemorially utilized dictatorial criminal procedure and punishment to make scape goats of the weak, or of helpless political, religious, or racial minorities and those who differed, who would not conform and who resisted tyranny. The instruments of such governments were in the main, two. Conduct, innocent when engaged in, was subsequently made by fiat criminally punishable without legisla-

[8] There have been long-continued and constantly recurring differences of opinion as to whether general legislative acts regulating the use of property could be invalidated as violating the due process clause of the Fourteenth Amendment. Munn *v.* Illinois, 94 U. S. 113, 125, dissent 136-154; Chicago, Milwaukee & St. Paul R. Co. *v.* Minnesota, 134 U. S. 418, dissent 461-466. And there has been a current of opinion—which this court has declined to adopt in many previous cases—that the Fourteenth Amendment was intended to make secure against State invasion all the rights, privileges and immunities protected from Federal violation by the Bill of Rights (Amendments I to VIII). See, e. g., Twining *v.* New Jersey, 211 U. S. 78, 98-9, Mr. Justice Harlan, dissenting, 114; Maxwell *v.* Dow, 176 U. S. 581, dissent 606; O'Neill *v.* Vt., 144 U. S. 323, dissent 361; Palko *v.* Conn., 302 U. S. 319, 325, 326; Hague *v.* C. I. O., 307 U. S. 496.

[9] Cf. Weems *v.* United States, 217 U. S. 349, 372, 373, and dissent setting out (p. 396) argument of Patrick Henry, 3 Elliot, Debates, 447.

tion. And a liberty loving people won the principle that criminal punishments could not be inflicted save for that which proper legislative action had already by "the law of the land" forbidden when done. But even more was needed. From the popular hatred and abhorrence of illegal confinement, torture and extortion of confessions of violations of the "law of the land" evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power. Thus, as assurance against ancient evils, our country, in order to preserve "the blessings of liberty", wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed.[10]

The determination to preserve an accused's right to procedural due process sprang in large part from knowledge of the historical truth that the rights and liberties of people accused of crime could not be safely entrusted to secret inquisitorial processes. The testimony of centuries, in governments of varying kinds over populations of different races and beliefs, stood as proof that physical and mental torture and coercion had brought about the tragically unjust sacrifices of some who were the noblest and most useful of their generations. The rack, the thumbscrew, the wheel, solitary confinement, protracted questioning and cross questioning, and other ingenious forms of entrapment of the helpless or unpopular had left their wake of mutilated bodies and shattered minds along the way to the cross, the guillotine, the stake and the hangman's

[10] As adopted, the Constitution provided, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." (Art. I, Sec. 9.) "No Bill of Attainder or ex post facto Law shall be passed" (*Id.*), "No State shall . . . . pass any Bill of Attainder, or ex post facto Law. . . . ." (*Id.*, Sec. 10), and "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court" (Art. III, Sec. 3). The Bill of Rights (Amend. I to VIII). Cf. Magna Carta, 1297 (25 Edw. 1.); The Petition of Right, 1627 (3 Car. 1, c. 1.); The Habeas Corpus Act, 1640 (16 Car. 1, c. 10.), An Act for [the Regulating] the Privie Councell and for taking away the Court commonly called the Star Chamber; Stat. (1661) 13 Car. 2, Stat. 1, C. 1 (Treason); The Bill of Rights (1688) (1 Will. & Mar. sess. 2, c. 2.); all collected in "Halsbury's Stat of Eng." (1929) Vol. 3.

noose. And they who have suffered most from secret and dictatorial proceedings have almost always been the poor, the ignorant, the numerically weak, the friendless, and the powerless.[11]

This requirement—of conforming to fundamental standards of procedure in criminal trials—was made operative against the States by the Fourteenth Amendment. Where one of several accused had limped into the trial court as a result of admitted physical mistreatment inflicted to obtain confessions upon which a jury had returned a verdict of guilty of murder, this Court recently declared, *Brown* v. *Mississippi*, that "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process.[12]

Here, the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the drag net methods of arrest on suspicion without warrant, and the protracted questioning and cross questioning of these ignorant young colored tenant farmers by State officers and other white citizens, in a fourth floor jail room, where as prisoners they were without friends, advisers or counselors, and under circumstances calculated to break the strongest nerves and the stoutest resistance. Just as our decision in *Brown* v. *Mississippi* was based upon the fact that the confessions were the result of compulsion, so in the present case, the admitted practices were such as to justify the statement that "The undisputed facts showed that compulsion was applied."[13]

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[11] "In all third degree cases, it is remarkable to note that the confessions were taken from 'men of humble station in life and of a comparatively low degree of intelligence, and most of them apparently too poor to employ counsel and too friendless to have any one advise them of their rights.'" Filamor, "Third Degree Confession", 13 Bombay L. J., 339, 346. "That the third degree is especially used against the poor and uninfluential is asserted by several writers, and confirmed by official informants and judicial decisions." IV National Commission On Law Observance and Enforcement, Reports, (1931) Ch. 3, p. 159. Cf. Morrison v. Calif., 291 U. S. 82, 95.

[12] 297 U. S. 278, 286.

[13] See Ziang Sung Wan v. United States, 266 U. S. 1, 16. The dissenting Judge below noted, — Fla. —, —, that, in a prior appeal of this same case, the Supreme Court of Florida had said: "Even if the jury totally disbelieved the testimony of the petitioners, the testimony of Sheriff Walter Clark, and one or two of the other witnesses introduced by the State, was sufficient to show

For five days petitioners were subjected to interrogations culminating in Saturday's (May 20th) all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt. The very circumstances surrounding their confinement and their questioning without any formal charges having been brought, were such as to fill petitioners with terror and frightful misgivings.[14] Some were practical strangers in the community; three were arrested in a one-room farm tenant house which was their home; the haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation. From virtually the moment of their arrest until their eventual confessions, they never knew just when any one would be called back to the fourth floor room, and there, surrounded by his accusers and others, interrogated by men who held their very lives—so far as these ignorant petitioners could know—in the balance. The rejection of petitioner Woodward's first "confession", given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which "broke" petitioners' will and rendered them helpless to resist their accusers further. To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol.

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that these confessions were only made after such constantly repeated and persistent questioning and cross-questioning on the part of the officers and one J. T. Williams, a convict guard, at frequent intervals . . . [while] they were in jail, over a period of about a week, and culminating in an all-night questioning of the petitioners separately in succession, throughout practically all of Saturday night, until confessions had been obtained from all of them, when they were all brought into a room in the jailer's quarters at 6:30 on Sunday morning and made their confessions before the state attorney, the officers, said J. T. Williams, and several disinterested outsiders, the confessions, in the form of questions and answers, being taken down by the court reporter, and then type-written.

"Under the principles laid down in Nickles *v.* State, 90 Fla. 659, 106 So. 497; Davis *v.* State, 90 Fla. 317, 105 So. 843; Deiterle *v.* State, 98 Fla. 739, 124 So. 47; Mathieu *v.* State, 101 Fla. 94, 133 So. 550, these confessions were not legally obtained."

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[14] Cf. the statement of the Supreme Court of Arkansas, Bell *v.* State, 180 Ark. 79, 89: "This negro boy was taken, on the day after the discovery of the homicide while he was at his usual work, and placed in jail. He had heard them whipping Swain in the jail; he was taken from the jail to the penitentiary at Little Rock and turned over to the warden, Captain Todhunter, who was requested by the sheriff to question him. This Todhunter proceeded to do day after day, an hour at a time. There Bell was, an ignorant country boy surrounded by all of those things that strike terror to the negro heart; . . . ." See Münsterberg, On the Witness Stand, (1927) 137 *et seq.*

We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws.[15] The Constitution proscribes such lawless means irrespective of the end. And this argument flouts the basic principle that all people must stand on an equality before the bar of justice in every American court. Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion.

The Supreme Court of Florida was in error and its judgment is

*Reversed.*

Mr. Justice MURPHY took no part in the consideration or decision of this case.

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[15] The police practices here examined are to some degree widespread throughout our country. See Report of Comm. on Lawless Enforcement of the Law (Amer. Bar Ass'n.) 1 Amer. Journ. of Pol. Sci., 575; Note 43 H. L. R. 617; IV National Commission On Law Observance And Enforcement, *supra*, Ch. 2, Sec. 4. Yet our national record for crime detection and criminal law enforcement compares poorly with that of Great Britain where secret interrogation of an accused or suspect is not tolerated. See, Report of Comm. on Lawless Enforcement of the Law, *supra*, 588; 43 H. L. R., *supra*, 618. It has even been suggested that the use of the "third degree" has lowered the esteem in which administration of justice is held by the public and has engendered an attitude of hostility to and unwillingness to cooperate with the police on the part of many people. See, IV National Commission, etc., *supra*, p. 190. And, after scholarly investigation, the conclusion has been reached "that such methods, aside from their brutality, tend in the long run to defeat their own purpose; they encourage inefficiency on the part of the police." Glueck, Crime and Justice, (1936) 76. See IV National Commission, etc., *supra*, 5; cf. 4 Wigmore, Evidence, (2d ed.) § 2251. The requirement that an accused be brought promptly before a magistrate has been sought by some as a solution to the problem of fostering law enforcement without sacrificing the liberties and procedural rights of the individual. 2, Wig., *supra*, § 851, IV National Commission, etc., *supra*, 5.